

In the Matter of:

Michael and Nancy Credle,

Petitioners

HUDBCA No. 02-C-NY-CC059
Claim No. 7-7103960-6

Michael and Nancy Credle
1008 Circlewood Drive
Richmond, VA 23224

Petitioners, Pro se

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For the Government

DECISION AND ORDER

Petitioners were notified by Due Process Notice that the Secretary of the U.S. Department of Housing and Urban Development (HUD) intended to seek administrative offset of any Federal payments due to Petitioners in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. Administrative offset is authorized by 31 U.S.C. § 3720A.

Petitioners have made a timely request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Administrative Judges of this Board have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). As a result of Petitioners' request, referral of the debt for offset was temporarily stayed by the Board.

Discussion

31 U.S.C § 3720A provides Federal agencies with a remedy for the collection of debts owed to the United States Government. The Secretary has filed a Statement with documentary evidence in support of his position that Petitioners are indebted to the Department in a specific amount.

Petitioners contend that the debt claimed by the Secretary should not be enforced against them because Petitioners never received payment information from the lender to whom the home improvement loan was sold, and Petitioners attempted to find out where to send loan payments, without success. Petitioner Nancy Credle then started experiencing personal problems, and states that she was unable to keep the property because of financial hardship. The property was sold in foreclosure in 1999, but Nancy Credle states that she never received any notice of foreclosure, although she was receiving mail at the address in Richmond, Virginia where she now lives, as well as in Irvington, New Jersey, where the improved property was located. (Letter from Nancy Credle, dated August 1, 2002.)

The Secretary has filed documentary evidence that on March 12, 1994, Petitioners jointly and severally executed a retail installment contract for home improvements with First Suburban Investment, Inc. that was insured against non-payment by the Secretary of HUD pursuant to Title I of the National Housing Act, 12 U.S.C § 1703. First Suburban Investment assigned the loan note to Prime Financial Corporation, which reassigned it to First National Bank of Keystone. (Secretary's Exhibit A.) Petitioners failed to make payment on the loan, and the loan note was assigned to the Secretary on August 8, 1997, as holder of the note on behalf of the United States. (Secretary's Exhibit B.)

The Secretary filed the Declaration of Brian Dillon, dated, August 30, 2002, together with documentary evidence showing attempts made by the lender to notify Petitioners about the default on the loan in 1996 and 1997. The notices were sent to 260 Orange Avenue, Irvington, New Jersey 07111, the address of the improved property. One notice was returned to the lender as "unclaimed." (Exhibits attached to Declaration of Brian Dillon.) According to Dillon's Declaration, there is no evidence in Petitioners' claim file indicating that any other address had been provided to the lender. HUD also used the Irvington, New Jersey address to send four demand notices to Petitioners between November 14, 1998 and January 10, 1998. A Due Process Notice dated October 5, 1998, was also sent by HUD to Petitioners at that address. HUD was not contacted by Nancy Credle until March 7, 2001, when she notified HUD of her current address in Richmond, Virginia. (Declaration of Brian Dillon, August 30, 2002.)

Under New Jersey law, the retail installment contract is defined as "personal property" because a financial obligation was created by the contract.

New Jersey Statutes, Title I, Section 1-2. Petitioners' real property was collateral for the loan note and the loan documents attached to the Declaration of Brian Dillon designate the loan as a mortgage. (Secretary's Exhibit A.) The contract makes no reference to any requirement of notice if Petitioners failed to pay on time any amount due under the contract. However, under New Jersey Statutes Section 2A-50-56 (4), a lender must give notice of intent to accelerate the maturity of a residential mortgage after default at least 30 days in advance of such action. New Jersey law requires that such notice:

Shall be in writing, sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address and if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party. N.J.S. § 2A-50-56(4)(b).

In this case, I find that the lender complied with New Jersey law by sending a notice of intent to accelerate to Petitioners at their last known address, which was also the address of the property that was the subject of the mortgage. Furthermore, under New Jersey law, notice was deemed effectuated when mailed. The Secretary has submitted documentary evidence of mailing by certified mail, return receipt requested. (Attachments to Declaration of Brian Dillon.) Petitioners have failed to file any evidence which would prove that the lender knew of another address at which to send notice of acceleration after default. I therefore find that the notices mailed to Petitioners, whether received or not, complied with New Jersey law.

Petitioners claim an inability to pay the debt because of financial hardship. This Board must determine whether, as a matter of law, this debt is legally enforceable against Petitioners. Unfortunately, evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether a debt is legally enforceable. Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996). In the absence of evidence to the contrary, I find the debt claimed by the Secretary is past-due and enforceable against Petitioners.

If Petitioners wish to negotiate repayment terms with the Department, Petitioners should contact Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. A review of Petitioners' financial status may be conducted if Petitioners submit to Mr. West a Title I Financial Statement (HUD) Form 56142).

ORDER

I find the debt which is the subject of this proceeding to be legally enforceable against Petitioners in the amount claimed by the Secretary. The order imposing a stay of referral of this matter to the IRS for administrative offset or to the U.S. Department of Treasury is vacated. It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioners.

Jean S. Cooper
Administrative Judge

March 14, 2003